

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

Indianapolis, IN

AUTOMOTIVE COMPONENTS
HOLDINGS, LLC¹

Employer

and

Case 25-RC-10309

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, UAW

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, (herein called the Act) a hearing was held on November 3 and 4, 2005,² before a hearing officer of the National Labor Relations Board, (herein called the Board) to determine an appropriate unit for collective bargaining.³

¹ The name of the Employer was amended at hearing to correctly reflect its current legal name.

² The Petitioner filed a motion to reopen the record to allow it to present newly discovered evidence and the Employer submitted a Brief in Opposition. A Regional Director has broad discretion to investigate election petitions and to conduct hearings, as he deems proper. Rules and Regulations of the National Labor Relations Board, Series 8 as amended, Section 102.63. In exercising this discretion, the undersigned is denying Petitioner's motion to reopen the record on the basis that the Petitioner presented no argument in its motion that the new evidence that it wishes to introduce was not discoverable with due diligence prior to the hearing nor does Petitioner offer evidence in its motion, if included in the record, that would materially affect the outcome of this decision.

³ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

I. ISSUES

The Petitioner, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (herein called the Petitioner or the Union) seeks an election within a professional unit comprised of all regular full-time and part-time engineers employed by Automotive Components Holdings, LLC (herein called the Employer) at its facility located in Indianapolis, Indiana, including manufacturing engineers, environmental health engineers, controls engineers, packaging engineers, industrial engineers, product design group employees, including product design test technicians, product design test engineers and product design engineers, but excluding quality engineers, manufacturing planning specialists, facilities engineers, temporary employees, employees covered by separate collective bargaining agreements, office clerical employees, guards and supervisors. The unit sought by the Petitioner would be comprised of approximately 54 employees

The Employer asserts that any appropriate unit must also include the quality engineers. The Petitioner, however, contends that the quality engineers perform mostly clerical work and not engineering work, and therefore, do not share a community of interest with the other engineers. The Employer further maintains that the appropriate unit should exclude the industrial engineers and product design engineers. The Employer contends that the industrial engineers' duties of performing work standard time studies and compiling information utilized in establishing the facility's yearly operating budget causes them to have a conflict of interest between their loyalty to the Employer and their loyalty to the production and maintenance employees that are also represented by the Petitioner. Furthermore, the Employer contends that the product design employees do not have a community of interest with the other engineers at the facility because that department's budget, human resource services, and management is handled by the Employer's corporate offices in Dearborn, Michigan, not at the Indianapolis facility like the other engineers. According to the Employer, the appropriate unit would be comprised of approximately 46 employees.

Accordingly, there are three classifications in dispute; quality engineers, product design group employees, industrial engineers and quality engineers. There are 18 employees included in the disputed classifications.

II. DECISION

For the reasons discussed in detail below, including the fact that the quality engineers, product design engineers and the industrial engineers enjoy a community of interest with the other engineers employed by the Employer, it is concluded that they shall be included in the unit found appropriate herein.

The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time manufacturing engineers,
environmental health engineers, controls engineers, packaging

engineers, industrial engineers, quality engineers, product design group employees, including product design test technicians, product design test engineers, and product design engineers employed by the Employer at its Indianapolis, Indiana facility; BUT EXCLUDING all manufacturing planning specialist, facilities engineers, temporary employees, employees covered by separate collective bargaining agreements, office clerical employees, guards and supervisors as defined in the Act, and all other professional and hourly employees.

The unit found appropriate herein consists of approximately fifty-nine (59) employees for whom no history of collective bargaining exists.

III. STATEMENT OF FACTS

A. Overview of Operations

The Employer's Indianapolis, Indiana facility has operated as an automobile parts factory for numerous years. Ford Motor Company owned and operated the facility until 2000 when it was sold to Visteon along with several of its other automotive parts facilities. Visteon experienced financial problems and approached Ford Motor Company about re-acquiring some of the facilities, including the Indianapolis facility. Ford Motor Company formed the Employer, a wholly owned subsidiary, which took over the operations at the Indianapolis facility (herein after called the facility) on October 1, 2005.

The facility employs approximately 2000 hourly production and maintenance employees that have been represented by the Petitioner since prior to 2000 when the facility was owned by Ford Motor Company. The subsequent purchasers of the facility, including the Employer, have become parties to the collective bargaining agreement between Ford Motor Company and the Petitioner covering the production and maintenance employees.

The facility produces automobile steering components. The production floor is divided into four departments: rack and pinion, pump, steering columns, and RV gear. Each department operates multiple production lines to produce interrelated parts for various automobile models. The facility also houses the product design department which consists of a prototype lab and a warranty lab where parts for new model automobiles are developed and tested. After the prototypes are fully developed, they are introduced and produced in the facility.

For the most part, with the exception of the product design engineers, the engineers are assigned to a certain production department or more specifically to certain lines in the four production departments. The engineers either report to a frontline supervisor that ultimately reports to a member of the management team for the facility or report directly to a member of the management team. The management team, consists of the plant manager, human resource manager, the controller, the facilities manager, the new models manager, quality manager, the MP & L manager, and the operations manager. The plant manager and the members of the management team report to a corporate vice-president at the Employer's corporate offices in

Dearborn, Michigan. The corporate office sets the operating budget for the production department, approves final production processes, and gives final approval for hiring.

The Employer maintains a budget for the product design department that is separate from the production department of the facility. If the product design department uses production resources such as hourly employees to run machinery to produce prototypes in the prototype lab, the production department is reimbursed for this expense. The product design engineers report to two product design supervisors⁴ at the facility, one over the prototype lab and one over the warranty lab. These supervisors do not directly report to anyone at the facility, but report to management officials in the product design department at the Employer's corporate offices. Ultimately, all of the product design managerial structure reports to the same corporate vice-president as the production department.

B. Common Terms and Working Conditions For Engineers

Many of the terms and working conditions are the same for all the classifications of engineers including the product design engineers. The engineers are all salaried employees and seldom work overtime unless required to for production reasons. The engineers are not required to complete a time card. Each of the engineer classifications has four pay levels.⁵ Although the record is unclear on the exact amount engineers in each level are paid, the pay levels are roughly \$60,000 for level one, \$70,000 for level two, \$80,000 for level three, and \$90,000 for level four. While there was some testimony that these pay levels vary from one classification to another, two engineers testified that they had moved from one engineering classification to another on more than one occasion without receiving a change in pay or pay level. All the engineers are offered the same health insurance and other benefits such as holidays and vacation days. All the engineers, including the product design engineers, receive the same yearly bonus based upon whether the budgetary goal for the plant is met.

Although not required for any of the engineering positions, an engineering degree is highly desirable in an applicant. If an applicant does not have a four year degree, the applicant would need equivalent training and experience in the field to be considered. The majority of the engineers working at the facility have engineering and/or technical degrees. The current practice is for the company to post job vacancies company-wide so that any qualified employee, even from other facilities, can apply. Historically, however, engineers have transferred between the engineering classifications within the facility and new hires have come from outside of the Employer rather than from the Employer's other facilities. The human relations manager for the facility testified that hiring, firing, discipline, etc. of the production department employees, including the engineers, is handled through the facility's human resources office, but the human relations department in the corporate offices reviews these actions and has the authority to disapprove any action.

⁴ The parties stipulated that the product design supervisors should be excluded because they exercise supervisory authority as defined in Section 2(11) of the Act.

⁵ The record is unclear as to what qualifies an engineer for a certain pay level.

All employees at the facility, including the engineers, carry identification badges which allow them access to the facility and locked areas within the facility. All the engineers wear business casual clothing. The engineers clear vacation, sick and personal absences through their immediate supervisors and submit request/time exception forms via computer. If an engineer is absent, someone from the same classification covers the position if necessary. Normally the work simply waits for the engineer's return. All engineers are allowed to take their breaks and lunches when convenient for their work schedules. The engineers work from 7:00 A.M. to 3:30 P.M. so that their hours coincide with the production and maintenance employees' day shift.

C. Specific Engineering Classifications

The ultimate goal of the Employer is to develop and produce conforming automotive components for its customers in the most efficient and economical way possible. Each of the engineering classifications discussed below plays a role in meeting this goal. As discussed more thoroughly below, the various engineering classifications have distinct duties, but the work is interrelated to meet this overriding goal.

1. Product Design Group Employees

The Employer seeks to exclude and the Union seeks to include the product design group employees due to a lack of community of interest. The product design group employees work to develop new prototypes for the Employer. The Employer is continuously involved in developing new prototypes to accommodate its customers' automobile model changes. Although the record does not specifically state the reason that the Employer maintains a separate budget and managerial structure for its product design department at the facility, possible reasons include that its customers pay separately for the designing of a new prototype and that the new model automobile components produced at the facility must coincide with the rest of the components of the new models that are made at other facilities. Regardless of the reasons that the Employer maintains a separate budget and managerial structure for the product design department, the record is clear that the goal of the product design department at the facility is to develop a conforming part that will ultimately be produced within the facility's production department.

The product design department consists of the prototype lab and the warranty lab to which approximately 10 employees are assigned. There are 8 product design engineers, a lab technician⁶, and a product design test technician in the department. As discussed above, there are two product design supervisors, one that oversees the warranty lab and one for the prototype lab. While the lab and test technician work with products produced in all of the production departments, the other product design engineers are assigned to work on products based on the specific production lines which will ultimately produce the product.

⁶ During the hearing, the parties referred to the product test engineer as the lab technician.

The prototype lab is a walled off room on the production floor. The warranty lab is also an enclosed area separate from the production floor and is located within the offices area of the facility. The equipment for these labs is purchased through the product design budget. The hourly employees that operate and repair the equipment in the product design labs are from the production and maintenance bargaining unit and are supervised by production department supervisors. The production department is reimbursed by the product design department for the hourly employees' labor.

The product design engineers coordinate the building and warranty testing of new prototypes for the Employer's customers. The product design engineers receive the specifications/prints for the new prototype from the corporate offices. Once the product design engineers receive the specifications, they coordinate the development and production of the prototype. The product design engineers may need to teleconference with personnel in the corporate offices about prototypes that they are developing. Often the manufacturing engineers who cover the production line where the prototype will ultimately be introduced are asked to be present for these teleconferences. Once the specifications are clear, the product design engineers work with the tool makers at the facility to develop the necessary machinery/tools to produce the new product.

The materials used in developing the prototype and the prototypes themselves are tested by the test technician and the lab technician that work in the prototype and warranty labs. These engineers are specially certified to operate the test equipment contained in the labs. The rest of the product design engineers do not actually perform work within the labs but consult with the production employees that work within the labs and on the production floor to develop and produce the new prototypes. Once the necessary modifications are made to the machinery that will produce the new prototype, the hourly employees assigned to the lab run the product.

Approximately, two or three times per month an order for a prototype requires a large number of parts. The product design engineers will work with the appropriate production department line to modify that machinery and run the part on the production floor. The product design engineers work closely with the manufacturing engineers when prototypes are produced on the production floor in order to alter the regular production process and return it to its status quo after the prototypes are produced. The product design engineers also work closely with the manufacturing engineers when new model prototypes are introduced to the production floor by assisting in determining the necessary changes to the production line to accommodate the new component. The product design engineers are responsible for completing forms necessary for the Employer's quality review program called PPAP (part approval process). The product design engineers pass the completed PPAP forms to the manufacturing engineers as the prototypes move to the production floor.

While the product design engineers' upper management and human resource services are located in the corporate offices, their day-to-day supervision is performed by the product design supervisors assigned to the facility. The on site supervisors are responsible, with corporate office oversight, for interviewing, hiring, disciplining, and evaluating product design engineers and for approving vacation days and absence requests from the product design engineers. The corporate office human resource department occasionally conducts teleconference meetings with the

product design engineers concerning their benefit packages and other human relations issues. For the most part, the product design engineers do not attend plant-wide production meetings at the facility, but they do attend an annual plant-wide safety meeting with all the employees that perform any work on the production floor of the facility.

At least two of the product design engineers have office cubicles in a small office near the prototype lab. The product design engineer that testified stated that he had recently moved to this office and shares it with another product design engineer. Previously his cubicle was located where the manufacturing and other engineers' offices are located in the office area of the facility. He stated that this change in office space was prompted by overcrowding in that office area and by convenience. His new office is conveniently located close to the product design supervisor's office, the prototype lab, and the pump process part of the production floor where he often works. It appears that some of the product design engineers still have cubicle/office space in the office area that houses the other engineers' offices.

2. Manufacturing Engineers

The largest classification of engineers at the facility is the manufacturing engineers consisting of approximately 35 employees. Their inclusion in the unit is not in dispute. The manufacturing engineers are assigned to one or more product lines and report to the manufacturing engineer supervisor⁷ assigned to those line(s). The manufacturing engineering supervisors report to the production line supervisors or their superintendents. Each production department is overseen by a manufacturing planning specialist who reports to the management team.

One manufacturing engineer is not assigned to a particular production line, but works through out the production department. He has a "black belt" in Six Sigma, an engineering problem solving tool aimed at lowering production costs. He trains the other manufacturing engineers to use Six Sigma and actually applies it to the production processes in the plant. His office is in the administration offices, because of lack of space in the area where the other engineers' offices/cubicles are located. The parties stipulated that he should be included in the mechanical engineer classification.

The manufacturing engineers are the most likely of the engineers to work overtime, because overtime is allowed only for production deadline purposes. Time beyond 40 hours per week is paid based upon the engineers' hourly rate. The engineers must request to work overtime through their supervisors.

The manufacturing engineers' responsibility is to design and maintain the set-up of the mechanical process of the production lines. The manufacturing engineers set up the order in which a multi-component automotive part such as a steering column is assembled. The manufacturing engineers are responsible for procurement of the necessary mechanical equipment

⁷ The parties stipulated that the manufacturing engineer supervisors should be excluded because they exercise supervisory authority as defined in Section 2(11) of the Act.

to establish the production line. The manufacturing engineers interact with the suppliers of the production equipment to establish the parameters and the speed at which the machines operate. The manufacturing engineers perform yearly machine cycle time checks to make sure the machines are operating per the specifications with which they were originally programmed. Also, the manufacturing engineers perform a machine cycle time check anytime a production process on a line has changed.

When a production process is being changed or a new prototype is being introduced, the manufacturing engineers work closely with the industrial engineers and the product design engineers assigned to the same production line. The product design engineers provide the manufacturing engineers with information about the changes to the production process that will be necessary to accommodate the new prototype. While the manufacturing engineers make decisions about the mechanical process of the production line (i.e. which equipment to purchase or modify) the industrial engineers make determinations about the human labor component of the production line (i.e. how to arrange materials, work areas, and the physical movement of the production employees). The manufacturing engineers and industrial engineers must work together to determine the most cost efficient options of how to meld human labor and mechanical labor in order to produce the component. Ultimately, personnel in corporate offices approve the final manufacturing process to be used and the manufacturing engineers and industrial engineers work together to implement the changes. These changes can result in a reduction or increase of hourly production employees needed on the line.

After a product line is functioning, the manufacturing engineers continue to evaluate the efficiency of the line. This process of evaluation is called value stream mapping. In performing this evaluation the manufacturing engineers take a comprehensive step-by-step look at the entire product line. A manufacturing engineer may consult with the product design engineer and the industrial engineer assigned to the line. The goal of value stream mapping is to cut production costs. The cost cuts may come from materials, machinery or labor changes.

The manufacturing engineers are also responsible for completing the PPAP book of quality control documents. In addition to making sure the prototype forms are in the book, the manufacturing engineers must make sure warranty forms have been completed and that the proper tests and forms have been completed in the production department. The manufacturing engineers are responsible for delivering the PPAP books to be shipped with the product.

3. Industrial Engineers

The Employer seeks to exclude and the Union seeks to include the industrial engineers in the unit. The main objective for the three industrial engineers in the facility is to keep labor costs at a minimum. The industrial engineers have three main duties to meet this goal: developing the labor process on the lines, analyzing production standards, and submitting data for developing the labor cost budget. Each of these duties requires the industrial engineer to work on the production floor with other engineers, especially the manufacturing engineers, and to perform computer or paper work. The industrial engineers' offices/cubicles are in the same area where most of the engineers at the facility have office space.

The industrial engineers develop the labor process by which the hourly employees are to perform their production work. The industrial engineers actually determine the necessary movements and the sequence in which those movements should be made in order for the production employee to be as efficient as possible. Each time that a new prototype or a change in an existing model comes to the production floor, the industrial engineer works with the manufacturing engineer and possibly the product design engineer to devise possible combinations of mechanical and human functions to produce the product. A particular process is ultimately approved by the corporate offices. The manufacturing engineer, packaging engineer and the controls engineers then work together with other employees in the facility such as the mechanics to get the proper equipment delivered, installed and functioning. Finally, the industrial engineer develops the proper process for the production employees to run the product through the machines.

Once a process has been established, the industrial engineer performs a study to determine the production standard. The production standard sets the production rate for a particular line. The study to establish the production standard currently used at the facility is called the Maynard Operations Sequence Technique (MOST). The MOST program has pre-determined time allotments for specific movements that an employee has to perform in order to complete a task. For example, if an employee has to move his arm a specific distance in order to perform the work, there is a code that is entered into the computer program for that motion. All the necessary motions to perform a job are evaluated and coded into the program. The cycle time of the machine which is set and checked by the manufacturing engineer is entered into the program. Calculations for machine down time, gaps in material supply, production employee breaks, and any other factor that could affect production rates are also entered into the program. Once all the data is entered into the computer program, a production standard is calculated for that line.

The industrial engineers currently report to the unit business manager who was formerly the industrial engineer supervisor and presently holds both positions. The industrial engineer supervisor reports to the controller. The controller's office oversees the finances of the facility and ultimately reports to the corporate offices. The industrial engineers do not report through the production managerial hierarchy or through the plant manager. This is an attempt by the corporate office to prevent them from being influenced at the plant level to lower production standards so they are easily met. Although there was evidence that the employees did not like to be the subjects of the studies especially as they were performed in the past with a stopwatch, there is no evidence that the industrial engineers ever adjusted the work standards in response to the production employees' uneasiness with the process. Furthermore, the testimony indicated that the production employees are less opposed to the MOST system of performing time studies because they are not literally under the stopwatch. The record does indicate that the industrial engineers have adjusted the production standards in response to requests by supervisors of the production line. The Employer historically has required the industrial engineers to notify the Union when a time study is going to be conducted. A Union representative for the production and maintenance unit is allowed to be present during the process.

Many of the production lines are governed by production standards set by the industrial engineers. Other production lines are governed by a lower production target negotiated by the Union. Contractually, production employees can be disciplined up to and including discharge for continually falling below the production standard. Approximately five years ago, seven employees were issued thirty day suspensions when it was determined that they were intentionally failing to meet the production standard. In that situation, an industrial engineer was asked to verify the production standard. Once the standard was verified, management determined that the employees must have been intentionally failing to meet the standard and issued the suspensions.

There was no evidence that the industrial engineer that performed the time study was involved in the decision to discipline the production employees or the type of discipline that they received. He simply verified the statistical production standard results. The Employer contends that an industrial engineer would be a necessary witness in a grievance/arbitration hearing concerning an employee's failure to meet the production standard, but no evidence was presented that this had ever occurred. On the other hand, there is evidence that the industrial engineers have coached production employees, upon their request, in the proper work technique so that they can meet the standard.

The industrial engineers also submit data that aids in the development of the production department's budget. Throughout the year, the industrial engineers record changes in the production process and perform cost studies in an effort to find ways to decrease labor costs. When budget preparation starts, the facility's controller's office sends the industrial engineers spreadsheets for the production lines that they cover. The spreadsheets were developed by the corporate offices and sent to the facility for raw data to be entered. The spreadsheets contain each part produced at the plant with any design changes or recommended cost study changes for the part made within the last year. The industrial engineer enters cost study data for each of the numerous fields for each part. Once the spreadsheets are completed, the industrial engineers send the spreadsheet to the controller's office to be forwarded to the corporate offices. The corporate offices select the final production process for which the next year's budget will be based and allocates a labor time or cost for each part. Often times the labor time or cost selected for the process is different than what the industrial engineer had calculated.

4. Quality Engineers

The quality engineer classification, which the Petitioner seeks to exclude and the Employer seeks to include, is a relatively new position at the facility. The five current quality engineers were previously in the quality manufacturing planning specialist position and had some supervisory authority. The record is clear that once they moved to the quality engineering position, they no longer possess any supervisory authority but maintained the salary of that position. The record is unclear as to how that salary compares to the salary of the other engineers. The quality engineers report to the quality manager.

The quality engineers, like the other engineers, are required to have engineering degrees and/or background. All the current quality engineers have manufacturing engineer degrees. The

quality engineers' office/cubicle spaces are dispersed throughout the area where most of the engineers at the facility maintain office space

The five quality engineers are generally assigned to one of the production departments, however, they cross over to other departments as needed.⁸ The quality engineers' main role is as highly trained customer service representatives. All customer inquiries are supposed to go through the quality engineers. It is the quality engineers' responsibility to coordinate a solution to the customers' complaint. The quality engineers consult with various other engineers and supervisors to resolve customer complaints. More involved customer complaints require the quality engineers to assemble a team to resolve the issue. These teams can consist of the test technician, and the product design, manufacturing, and industrial engineers assigned to the product in question. The actual solution to the complaint is likely devised by one of the engineers other than the quality engineers. The quality engineers document the situation and communicate the results to the customer.

5. Controls Engineers, Environmental Health Engineer, and Packaging Engineers

The controls, environmental health and packaging engineers support the production process, and the inclusion of these classifications are not at issue. The office/cubicle space for these engineers is in the office area by the administration offices where most of the engineers have office space. Each position supports the production process in a distinct way.

a. Controls Engineers

Currently, there are four controls engineers at the facility with one assigned to each production department. Most of their work revolves around electrical engineering and they have education or experience in this area. The control engineers are the only employees at the facility that can open the electrical panels on the equipment to perform electrical work. The controls engineers have special safety equipment to prevent electrical shock. The control engineers also set up the computer programs that operate the production lines. Most of the controls engineers' time is spent on the production floor. The record is unclear as to whether the controls engineers also perform electrical/computer work in the warranty and prototype labs.

The controls engineers report to the facilities manager who is a member of the production management team. As discussed above, the controls engineers have common terms and conditions of employment with the other engineers including the same shift, salary scale, benefits, and education requirements.

⁸ There is no quality engineer assigned to the column production line because the manufacturing engineer for that line also performs those duties. The parties stipulated that this manufacturing engineer is properly included in the manufacturing engineer classification because the majority of her duties are within that classification.

b. Environmental Health Engineer

The facility has one environmental health engineer who works throughout the facility to insure that the facility is in compliance with Occupational Safety and Health Administration standards. The environmental health engineer also reports to the facilities manager. The environmental health engineer also has common terms and conditions of employment with the other engineers including the same shift, salary scale, benefits, and education requirements.

c. Packaging Engineer

The packaging engineer duties are mostly clerical. The packaging engineer acts as a liaison between the engineers that work within the facility and outside equipment suppliers. When the engineers, usually the manufacturing engineers, make equipment procurement requests, the requests go through the packaging engineer. The suppliers send blueprints of the equipment to the packaging engineer who distributes them to the proper personnel in the facility. Once a blueprint is modified or approved it would go back through the packaging engineer to the customer.

Although most of the computer aided drafting (CAD) work is done by temporary employees, the packaging engineer is occasionally asked to perform CAD work for special projects because he has this particular skill. The packaging engineer may also assist in construction work on the production floor because of his drafting and construction background. As with the controls engineers and the environmental health engineer, the packaging engineer has the common working conditions discussed above as the other engineers.

D. Engineer Interchange

On a day-to-day basis there is little interchange between the engineering classifications, but there is significant interchange between the engineering classifications when positions become vacant. As discussed above, if an engineer is absent for a short period of time then another engineer from that classification performs the work if necessary. Usually the work simply waits for the engineer to return.

On the other hand, there is regular interchange from one engineering classification to another to fill vacant positions. According to the testimony of one product design engineer, all of the current product design engineers have held positions within the production department. While most of them held engineer positions some of them held supervisory positions or a combination of the two before transferring to the product design department. The product design engineer that testified at the hearing had moved from an industrial engineer position to a manufacturing engineer position to a product design engineer position. In 2001, he was simply asked by the product design engineer supervisor if he wanted an available product design engineer position and he accepted. He described his transfer from the manufacturing engineer to the product design engineer position as “transparent”, because he had no change in salary,

benefits, or shift. The industrial engineer that testified was originally hired as a manufacturing engineer and then proceeded through the following line of positions: product design liaison to Europe, manufacturing engineer supervisor, and finally an industrial engineer for about the last 11 years. The industrial engineer supervisor that testified at the hearing stated that the industrial engineers need to be well versed in the business and often transfer from other engineering positions at the facility. Although no specific examples were given the record indicates that the quality engineers previously held other engineer positions at the facility in order to be qualified to perform the duties of the quality engineer position.

IV. DISCUSSION

A. An Overview of Applicable Board Law

Under Section 9(b) of the Act, the Board has broad discretion to determine "the unit appropriate for the purposes of collective bargaining" in each case "in order to assure to employees the fullest freedom in exercising the rights guaranteed by the Act." NLRB v. Action Automotive, Inc., 469 U.S. 490, 494-97 (1985). The Board's discretion extends to selecting an appropriate unit from the range of units which may be appropriate in any given factual setting and it need not choose the most appropriate unit. *See* American Hospital Assn. v. NLRB, 499 U.S. 606, 610 (1991); P.J. Dick Contracting, Inc., 290 NLRB 150, 151 (1988).

In determining an appropriate unit, the ultimate question is whether the employees share a sufficient community of interest to warrant their joinder within one unit. *See* Alois Box Co., 326 NLRB 1177 (1998); Washington Palm, Inc., 314 NLRB 1122, 1127 (1994). In analyzing whether employees share such a community of interest, the Board weighs a variety of factors, including similarities in wages or method of compensation; similar hours of work; similar employment benefits; similar supervision; the degree of similar or dissimilar qualifications, training, and skills; similarities in job functions; the amount of working time spent away from the facility; the integration of work functions; the degree of interchange between employees as well as the degree of employee contact; and the history of bargaining. *See* Action Automotive, 469 U.S. at 494-97; Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

Although a classification of employees may share a community of interest with the other classifications in the petitioned for unit, that classification can be excluded if the employees therein are found to be "confidential" employees whose participation in the unit "would necessarily subject them to a critical conflict of interest and impair their trust with the employer." Pullman, Inc., 214 NLRB 762, 763 (1974). The Board test to determine whether an employee is confidential is narrowly applied. An employee will be excluded

[f]rom a bargaining unit as confidential only if that employee assists and acts in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations. B.F. Goodrich Co., 115 NLRB 722 (1956); PTI Communications, 308 NLRB 918 (1992). The Board will also exclude employees who have access to

confidential information regarding anticipated changes that may result from collective-bargaining negotiations; however, the Board will not exclude employees who merely have access to personnel or statistical information on which an employer's labor relations policy is based, nor will it exclude employees with access to labor relations information after it has become known to the union or employees concerned. Pullman, Inc., 214 NLRB 762 (1974). S.S. Joachim and Anne Residence, 314 NLRB 1191, 1195-96 (1994).

The party asserting confidential status has the burden of providing the evidence to support its assertion. Id. See also Intermountain Electric Assn., 277 NLRB 1 (1985).

B. Product Design Engineers

The Employer contends that the product design engineers do not share a community of interest with the other engineers at the facility because their salaries come from a separate budget, their immediate supervisors report directly to its corporate offices, and their human resource services are headquartered at the corporate offices.

The product design engineers share a community of interest with the other engineers at the facility because they are similarly situated to the other engineers in most of the factors considered by the Board in determining whether employees share a community of interest. As discussed above, the Board considers various factors in determining whether employees in differing job classifications share a community of interest. From the following discussion of those factors as they apply to the product design classification, it is clear that the product design engineers are properly included in the unit.

Like the other engineers, the product design engineers' salaries fall within a four-tier salary range depending upon skill and experience. At least one witness testified that he had moved into the product design position from a mechanical engineer position without any salary change. All the engineers work the 7:00 A.M. to 3:30 P.M. shift and work limited paid overtime only for production reasons. The manufacturing engineers receive the most overtime but a new overtime policy has significantly limited their overtime as well. All of the engineers enjoy the same health and welfare benefits, holidays, vacation days, etc. All of the engineers receive the same bonus based upon the production department operating within the proposed budget.

All of the engineers wear business casual attire to work and have office/cubicle space in the facility where a significant amount of their work time is spent. Although at least a few of the product design engineers' office space is separately located from most of the other engineers, the record infers that this separate location was motivated by space limitations and convenience for the product design engineers. Similarly, office space for a few of the engineers in the classifications that the parties agree should be included in the unit are located away from the other engineers. There is no difference in education or skill requirement between the product design engineers and the other engineering classifications. All open positions at the facility are posted company-wide and transfers between engineering positions has been so common that

most of the current product design engineers have held other engineering positions within the facility. All the engineers carry identification cards that allow them the same access throughout the facility and use the same facility amenities. Although not specifically discussed in the record, all the engineers are likely to have occasional non-work related contact such as during breaks, because they all work the same hours in the same facility.

Clearly the product design engineering work is integrated into the work of the other engineer classifications. The product design engineers develop prototypes that are ultimately produced by the production department. The product design engineers interact with the manufacturing engineers and industrial engineers when the new prototypes are introduced into the production lines and possibly earlier if a large number of the prototypes are ordered by the customer before the prototype is finally adopted. These interactions can occur as often as two or three times per month and can be quite extensive when new prototypes are being introduced. This interrelation between the product design department and the production department is highlighted by the fact that product design engineers must complete quality forms that are included with the quality assurance PPAP documentation that the manufacturing engineers complete before the products are shipped from the production department.

The Employer contends that because the product design engineers are paid from a different budget and report more directly to corporate offices than the other engineers; this prevents them from having a community of interest with the other engineers. The Employer does not cite any case authority that these particular factors outweigh the other factors considered by the Board in making a community of interest determination. From the record evidence, the Employer's emphasis on these factors appears overstated. The testimony is that the corporate offices set the final labor costs for each part that is produced in the production department and controls the overall budget for that department. At the end of the day, the corporate offices control the budget for both the production and the product design departments. The corporate oversight in both the budgets is evident in the fact that all engineers have the same salary ranges, benefits, and bonuses.

The Employer contends that any bargaining concerning the product design department would require the presence of corporate officials that otherwise would not be involved in negotiating a contract for the production department engineers at the facility, because of the maintenance of separate budgets. This possible hardship for the Employer does not override the community of interest between the product design engineers and other engineers at the facility. The fact that the Employer maintains separate budgets for these departments does not prevent the product design engineers from having a community of interest with the other engineers at the facility.

The second contention of the Employer is that the product design engineers do not share a community of interest with the other engineers because the product design engineers' immediate supervisors report directly to managers for that department located in the corporate offices. Ultimately, those managers report to one of the Employer's vice-presidents. The immediate supervisors for the other engineer classifications through varying steps of the chain of command actually report to the same vice-president. With the exception of the environmental health engineer and the controls engineers, each of the other engineering classifications report to

different immediate supervisors at the facility. Furthermore, the manufacturing engineers are divided up among supervisors like the product design engineers are divided between the two supervisors for that department. The actual hiring, firing, disciplining, directing of work, etc. of the product design engineers is done by the supervisors at the facility with the authority of the product design managers and the human relations managers at the corporate offices. Similarly the actions of the human relations department and the supervisory staff at the facility undergo at least a cursory approval by the corporate offices. The presence or absence of shared supervision is but one factor to be considered, and is not necessarily dispositive of unit determinations. Novato Disposal Services, Inc., 330 NLRB 632 (2000), citing, Mc-Mor-Han Trucking Co., 166 NLRB 700, 701 (1967). Because of the other shared community of interest factors between the product design engineers and the other engineers, the differences in their managerial hierarchy is not sufficient to outweigh those community of interest factors.

Therefore, based on all the evidence discussed above, the product design engineers are found to have a community of interest with the other engineers in the petitioned for unit and are appropriately included in the unit.

C. Quality Engineers

The Petitioner contends that there is no community of interest between the quality engineers and the rest of the engineers at the facility because the quality engineer positions were filled by former quality manufacturing planning specialists and because the quality engineers' duties are mostly clerical. The Petitioner does not contend that the quality engineers retained any supervisory authority from their previous positions, but claims that they maintained the pay scale from this previous position. No evidence was submitted into the record that the quality engineers' pay scale differs significantly from the other engineers. The testimony was that the quality engineers are salaried employees with only an implication that they may make somewhat more money than the other engineers.

Quality engineers take incoming complaints from customers, document them, organize the necessary engineers and supervisors to resolve the problem and report back to the customer. Although the quality engineers are handling the paperwork aspect of the customer complaints, they are also communicating with the customers and with the other engineers about technical issues that require an understanding of the engineering tasks at hand. While much of this work is clerical, all of the engineers do a significant amount of clerical or record keeping work. The packaging engineer, which the parties stipulated should be included, does almost exclusively clerical work. The industrial engineers perform data entry necessary to complete time studies and budgetary spreadsheets. The manufacturing and product design engineers complete quality control forms for the PPAP warranty control documents.

Although the quality engineers may spend a higher percentage of their work time completing clerical duties than the other petitioned for engineers, they share a community of interest with the other engineers. They work the same shift, wear the same type of attire, have access to the facility using the same type of identification badge, have office space in the same area that most of the other engineers have office space, and have the same benefits such as health

insurance, holidays, vacation days, etc. Although they report directly to the quality manager and not to a supervisor that then reports to a manager, other engineering classifications such as the controls engineers and the environmental health engineer, both which are included in the petitioned for unit, have similar reporting structures.

Although the record contains no specific evidence that the quality engineers had previously held other engineering positions, this appears to be the case. The quality manufacturing planning specialist position from which the quality engineers were transferred was referred to as a steppingstone towards a managerial position. Presumably, these individuals were moving up from lower positions including engineering positions. Indeed, all of the current quality engineers hold manufacturing engineer degrees.

The quality engineers must interact with the other engineers to accomplish their work. For example, the quality engineer may bring a defective part to the lab technician and/or the test technician to determine where the actual defect occurred. Once the defect is found, the quality engineer would coordinate the necessary team of product design, manufacturing engineers and supervisors to find a solution to the problem. The team works together to resolve the problem and the quality engineer reports the solution back to the customer.

In weighing the community of interest factors that the quality engineers enjoy with the other engineers, it is clear that it would be inappropriate to exclude them from the unit of engineers at the facility. It is not appropriate to exclude one small group of engineers that share so many community of interest factors with the rest of the engineering classifications in the petitioned for unit. Accordingly, the quality engineers are found to have a community of interest with the other engineers in the petitioned for unit and are appropriately included in the unit.

D. The Industrial Engineers

The Employer contends that the industrial engineers should be excluded from the appropriate unit because: 1) the collective bargaining agreement for the production and maintenance unit expressly prohibits the Union from organizing them; 2) their job functions in conducting time studies and establishing and defending production standards and their access to confidential information could cause a conflict of interest between the industrial engineers' loyalty to the Employer and their loyalty to the production and maintenance employees who are also represented by the Petitioner; and 3) they do not share a community of interest with the engineers in the appropriate unit.

With regards to the Employer's first contention, the collective bargaining agreement provision cited by the Employer in which the Union purportedly agrees not to seek to represent industrial engineers was not entered into evidence but was attached to the Employer's brief. As this provision was not introduced or offered at the hearing, no evidence was developed regarding its history, meaning, and effectiveness. Based thereon, the existence of such a provision is given no weight in this decision.

To the extent that the Employer argues that the industrial engineers are confidential/managerial employees it is noted that the Board applies a narrow test in making determinations as to whether a classification of employees is confidential based upon whether an employee has the capacity to “formulate, determine, and effectuate management policies in the field of labor relations.” S.S. Joachim And Anne Residence, *supra* at 1195-96. In Case Corporation, 304 NLRB 939 (1991), the Board applied this narrow test to a classification of industrial engineers and found that they were not confidential or managerial employees. In that case, the Board found that the industrial engineers provided statistical information to the employer that affected staffing levels, the budget, and the employer’s position on grievances concerning production standards, but the Board still found they were not confidential or managerial employees. *Id.* at 939-43.

In Case Corporation, the industrial engineers’ duties were almost identical to the industrial engineers’ duties in this case. Similar to this case, the industrial engineers in Case Corporation used the MOST process to determine production standards and reestablished these standards when changes were made to the production line. The industrial engineers in that case had actually participated in third step grievance meetings concerning the production standard that they had established in order to explain the process by which the standards were set. The Board noted that the record in that case contained no evidence that the industrial engineers decided or resolved grievances. *Id.* at 939. In this case, there is no evidence that an industrial engineer ever had to participate in a grievance/arbitration proceeding let alone that the industrial engineers were privy to the Employer’s grievance negotiation strategy or had any authority to resolve grievances. Clearly, there was no evidence presented that the industrial engineers effectuate the Employer’s labor relations policy with regards to the grievance procedure.

The industrial engineers in Case Corporation developed the method by which hourly employees performed their work on the production lines. In Case Corporation, the industrial engineers used this information to make staffing recommendations to management in order for the production department to stay within budget, but did not have the authority to make any actual staffing changes. The industrial engineers in that case were also aware of the plant’s operating budget and asked to trim a specific percentage from the budget. If the budget savings were met, then all the engineers received a bonus. *Supra* at 941-43. Similarly in this case, the methods developed by the industrial engineers have the potential to affect the number of hourly employees needed to operate the line, but the industrial engineers do not have the authority to make staffing decisions such as whether employees should be laid off versus transferred. Without such authority, the industrial engineers are not actually formulating or effectuating labor relations policies, and therefore, are not confidential employees because they merely provide statistical information from which staffing levels may be based.

Additionally while, the industrial engineers provide statistical information for spreadsheets that are used to develop the labor cost budget for the products produced and the industrial engineers have knowledge of the finalized labor cost budgeted by the Employer for the products to which they are assigned, the record contains no evidence that the industrial engineers have been consulted concerning labor costs during contract negotiations for the production and maintenance employees. Because no evidence was presented in this case that the industrial engineers have knowledge or control over any of the precise collective-bargaining terms to

which the Employer would agree, the industrial engineers role in budget planning is not sufficient to make them confidential employees. Case Corporation, at 939. Thus, the industrial engineers are not confidential or managerial employees.

In Case Corporation the Board further found that the duties of the industrial engineers were such that their representation by the union would not create a conflict of interest or adversely effect the performance of their duties with regard to the production and maintenance employees who were already represented by the same union. *Supra* at 939. Similarly, the industrial engineers' duties in this case do not cause a conflict of interest such that they cannot be represented by the same union as the production and maintenance employees.

Finally, the Employer contends that the industrial engineers do not share a community of interest with the other engineers in the proposed unit. In support of this contention, the Employer cites The Lundy Packing Company, Inc., 314 NLRB 1042 (1994) and Virginia Manufacturing Co., Inc., 311 NLRB 992. Both of these cases can be distinguished from the case at hand, because the petitioners in those cases were seeking to include the industrial engineers/product control clerk, who performed similar time studies as those performed by the industrial engineers in this case do, in production and maintenance units. The Board found in those cases that there was a lack of community of interest between the industrial engineers/product control clerk and the production and maintenance employees included in the unit. *Id.* These cases are inapposite to the case at hand because the Petitioner is seeking a unit of engineers separate from the production and maintenance employees.

The issue in this case is whether the industrial engineers have a community of interest with the other petitioned for engineers not the production and maintenance employees. The evidence established that the industrial engineers do share a community of interest with the other engineers, because they share virtually all the community of interest factors. They work in the same facility, have office space in the same area as most of the other engineers, have similar supervisor/managerial structure as the other engineers, have held other engineering job classifications, and interact with other engineers in the course of performing their work. Furthermore, they have the same education requirements, hours of work, pay scale, employee identification badges, and dress requirements as the other engineers. Therefore, the industrial engineers shall be included in the appropriate unit.

V. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned, among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been

permanently replaced, as well as their replacements, are eligible to vote. Those in the unit who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are former unit employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW.

VI. NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices, Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

VII. LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the undersigned within 7 days from the date of this Decision. North Macon Health Care Facility, 315 NLRB 359 (1994). The undersigned shall make this list available to all parties to the election. In order to be timely filed, such list must be received in Region 25's Office, Room 238, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204-1577, on or before **December 9, 2005**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

VIII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099-14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by December 16 2005.

SIGNED at Indianapolis, Indiana, this 2nd day of December 2005.

/s/

Rik Lineback
Regional Director
National Labor Relations Board
Region 25
Room 238, Minton-Capehart Building
575 North Pennsylvania Street
Indianapolis, IN 46204-1577

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